Soil Productivity Factors and Agricultural Land

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Soil Productivity Factors and Agricultural Land

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Soil Productivity Factors and Agricultural Land

- **IC 6-1.1-4-13**
  Agricultural land; assessment; soil productivity factors
  Sec. 13. (a) In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.
  (b) The department of local government finance shall give written notice to each county assessor of:
    (1) the availability of the United States Department of Agriculture's soil survey data; and
    (2) the appropriate soil productivity factor for each type or classification of soil shown on the United States Department of Agriculture's soil survey map.

Soil Productivity Factors and Agricultural Land

All assessing officials and the property tax assessment board of appeals shall use the data in determining the true tax value of agricultural land. However, notwithstanding the availability of new soil productivity factors and the department of local government finance's notice of the appropriate soil productivity factor for each type or classification of soil shown on the United States Department of Agriculture's soil survey map for the March 1, 2012, assessment date, the soil productivity factors used for the March 1, 2011, assessment date shall be used for the March 1, 2012, assessment date and for the March 1, 2013, assessment date. New soil productivity factors shall be used for assessment dates occurring after March 1, 2013.

Soil Productivity Factors and Agricultural Land

(c) The department of local government finance shall by rule provide for the method for determining the true tax value of each parcel of agricultural land.

(d) This section does not apply to land purchased for industrial, commercial, or residential uses.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.63-1983, SEC.1; P.L.24-1986, SEC.6; P.L.75-1987, SEC.1; P.L.6-1997,SEC.14; P.L.90-2002, SEC.36; P.L.178-2002, SEC.5; P.L.112-2012, SEC.9; P.L.1-2013, SEC.1.

Soil Productivity Factors and Agricultural Land

Data Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Tax year													
14/15								$2,050					
13/14							$1,760						
12/13						$1,630							
11/12					$1,500								
10/11				$1,290 ***									
09/10			$1,250										
08/09		$1,200											
07/08	$1,140 **												
06/07		$880 *											
05/06	$880												

Soil Productivity Factors and Agricultural Land

- March 1, 2006 payable in 2007 *
  - Senate Enrolled Act (SEA) 327 froze the base rate for the March 1, 2006 assessment date at $880.
- March 1, 2007 payable in 2008 **
  - SEA 327 required changing the four-year rolling average to a six-year rolling average.
- March 1, 2010 payable in 2011 ***
  - SEA 396 required the elimination of the highest year of the six years of data from the calculation.

Soil Productivity Factors and Agricultural Land

- The Agricultural Land Base Rate calculation was first established for the 2002 general reassessment and was developed in compliance with the St. John's court case using the methodology described below. The statute related to the base rate calculation can be found at IC 6-1.1-4-4.5(e).
- The market value in use of agricultural land is calculated by dividing the net income of each acre by the appropriate capitalization rate:
- **Market value in use = Net Income / Capitalization Rate**

Soil Productivity Factors and Agricultural Land

- The net income of agricultural land can be based on either the net operating income or the net cash rent. Net operating income is the gross income received from the sale of crops less the variable costs (i.e. seed and fertilizer) and fixed costs (i.e. machinery, labor, property taxes) of producing crops. The net cash rent income is the gross cash rent of an acre of farmland less the property taxes on the acre. Both methods assume the net income will continue to be earned into perpetuity.
- The change in market value in use is based on changes in cash rent, yields, production costs, market prices, and interest rates. For example, the change for 2014 pay 2015 was the result of the removal of the 2005 data and the addition of the 2011 data.

Soil Productivity Factors and Agricultural Land

- Since agricultural land in Indiana is nearly evenly divided between cash rent and owner-occupied production, the Department utilized a six-year rolling average (2006 to 2011) of both methods in determining the market value in use of agricultural land. The capitalization rate applied to both types of net income was based on the annual average interest rate on agricultural real estate and operating loans in Indiana for this same period.

Soil Productivity Factors and Agricultural Land

- The table below summarizes the data used in developing the average market value in use.

	NET INCOMES			MARKET VALUE IN USE		
Year	Cash Rent	Operating	Cap. Rate	Cash Rent	Operating	Average
2006	110	74	8.18%	1,345	905	1,125
2007	122	184	7.94%	1,537	2,317	1,927
2008	140	189	6.56%	2,134	2,881	2,508
2009	139	116	6.17%	2,253	1,880	2,066
2010	141	172	5.97%	2,362	2,881	2,621
~~2011~~	~~160~~	~~254~~	~~5.61%~~	~~2,852~~	~~4,528~~	~~3,690~~

Average Market Value in Use	**$2,050**

Soil Productivity Factors and Agricultural Land

- Classification:

  Land Base Rates are only one component of the land valuation calculation.

  - Additionally land use type influences and soil productivity factors are also components in the land valuation calculation.

Soil Productivity Factors and Agricultural Land

Land Type	Description	% Off
21 thru 25	Classified Land Types	-100%
4	Tillable Crop Land	None
41	Tillable Land that floods occasionally	-30%
42	Tillable land that floods severely	-50%
43	Designated farmed wetlands	-50%
5	Non-tillable land	-60%
6	Woodland	-80%
71	Other farmland: land used for farm buildings and barn lots	-40%
72	Other farmland: land covered with a farm pond or running water	-40%
73	Other farmland: designated wetlands	-40%

Soil Productivity Factors and Agricultural Land

- Memos/Guidance:
  - http://www.in.gov/dlgf/files/Memo_020808WoodlandPricing-FINAL_2_with_Examples.pdf
  - http://www.in.gov/dlgf/files/101110_-_Wood_Memo_-_Woodlands_Guidance.pdf
  - http://www.in.gov/dlgf/files/120316_Soil_Productivity_Factor_Changes.pdf
  - http://www.in.gov/dlgf/files/Revised_110815_-_Wood_Memo_-_Land_Type_Codes_-_Farmland_Memo.pdf
  - http://www.in.gov/dlgf/files/121228_-_Certification_Letter_-_2013_Agricultural_Land_Base_Rate.pdf
  - http://www.in.gov/dlgf/files/Reference_Materials_for_2013_Ag_Land_Base_Rate.pdf
  - http://www.in.gov/dlgf/files/121228_Ag_Land_Example_2010-2013.pdf
  - http://www.in.gov/dlgf/files/121228_History_of_Agricultural_Land_Base_Rate.pdf
  - http://www.in.gov/dlgf/files/121228_FAQ_-_Agriculture_Land_Base_Rate_-_March_1_2013.pdf
  - http://www.in.gov/dlgf/files/130301_-_Wood_Memo_-_2013_Soil_Productivity_Factor_Guidance.pdf

Soil Productivity Factors and Agricultural Land

- **Soil Productivity Factors**
  - Legislation
  - Old Factors
  - Proposed Factors
  - Changes/Maps

Soil Productivity Factors and Agricultural Land

- Legislation:
- Pursuant to SEA 319 – 2013, the DLGF, in cooperation with the Purdue University College of Agriculture, was required to submit by November 1, 2013 the following:

  (1) Proposed soil productivity factors to be used in the assessment of agricultural land under IC 6-1.1-4-13.

  (2) An explanation of the methodology used to determine the proposed soil productivity factors.

  (3) Data, from each county, used to determine the proposed soil productivity factors.

  (4) Evidence of oral testimony and written comments provided to the department of local government finance by taxpayers and other stakeholders concerning the proposed soil productivity factors.

Soil Productivity Factors and Agricultural Land

- Factors are based on properties of the soil, such as slope, moisture holding capacity, organic matter content, and several other properties that affect corn yields.
- Soil Productivity Factors are multiplied by the Base Rate for an Adjusted Ag Land Rate.
- A land influence may or may not then be applied – based entirely on the AG land use type.

Soil Productivity Factors and Agricultural Land

- “Old” Factors:
- For 2007 the lowest factor was 0.50 and the highest was 1.28. The same soil factors that were used for the 2011 and 2012 assessment dates should have also been used for the March 1, 2013 assessment date.
- Individual factors vary depending on soil types.
- Soil types are specific to the county, but individual factors should be consistent per its type, regardless of the county.

Soil Productivity Factors and Agricultural Land

- "Proposed" Factors:
- Proposed ("new") soil productivity factors shall be used for assessment dates occurring after March 1, 2013.
- In regard to the methodology used to determine the proposed soil productivity factors, Purdue utilized the "Dideriksen Model" in the calculation of the factors. The Dideriksen Model, which is a corn yield model that evaluates corn yield changes in soil relative to a set index yield potential, contains fourteen (14) soil characteristics which are used to evaluate yield changes from index soils.

Soil Productivity Factors and Agricultural Land

- These soil characteristics are considered to have either beneficial or detrimental effects on corn yield. If the effects are beneficial, then bushel per acre are added. If the effects are detrimental, bushels per acre are removed.
- The soil input values used as input for the Dideriksen Model were obtained from the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture (USDA) Soil Survey Database.

Soil Productivity Factors and Agricultural Land

- The Dideriksen Model does not take differential management strategies into account, but does assume management at a level required for crop production. The model also assumes that tile drainage is in place for wet soils. This assumption is necessary and valid considering large areas of Indiana farmland would be poorly drained and unsuitable for agriculture without tile drainage.

Soil Productivity Factors and Agricultural Land

- A soil productivity ranking factor was generated from the corn yield prediction of the Dideriksen Model. Corn yield values themselves are not of interest, but instead, the yield value of each soil relative to all other soils can be used to establish a relative productivity ranking index. Corn yield was selected as the metric for the soil ranking calculation because corn is a major agricultural product for Indiana and corn is sensitive to changes in soil properties.

Soil Productivity Factors and Agricultural Land

- The predicted corn yield from the Dideriksen Model for each soil map unit was divided by 145 bushels/acre. The value of 145 bu/acre was the model yield for the Miami soil mapping unit. According to the USDA National Agricultural Statistics Agency, the average corn yield in Indiana was near 145 bu/acre. Mapping units with modeled yields of 73 bu/acre have a soil ranking factor of 0.50, which corresponds to the minimum allowable soil ranking factor. All mapping units with a yield less than 73 bu/acre were given the minimum soil ranking factor of 0.50.

Soil Productivity Factors and Agricultural Land

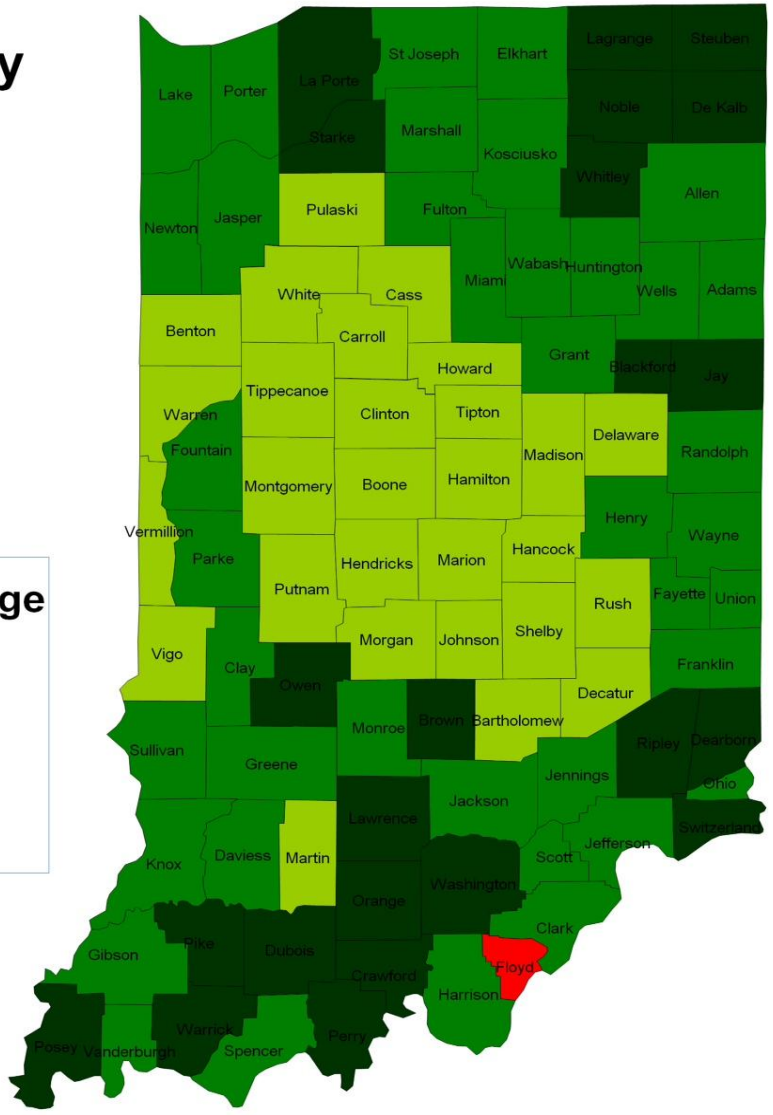
- Additionally, the Department worked with the NRCS in compiling correlation documents and amendments for the Soil Surveys in all 92 counties in Indiana. These are the official documents when Soil Surveys are changed.
- A copy of Purdue's report to the Commission on State Tax and Financing Policy can be found at: http://www.in.gov/legislative/interim/committee/prelim/STFP04.pdf.

Soil Productivity Factors and Agricultural Land

- Changes/Maps:
- The proposed soil factors average very close to 1 across the state. Since the old factors averaged about 0.95, the proposed factors will increase farmland taxes approximately 6% or so on average.
- The range of county average soil factors has narrowed with the proposed factors. There is a tight correlation between the level of the old factors and the percentage increase to the proposed factors, meaning high factors increased less and low factors increased more.

Soil Productivity Factors and Agricultural Land

Estimated County Average Change DLGF Proposed Soil Productivity Factors

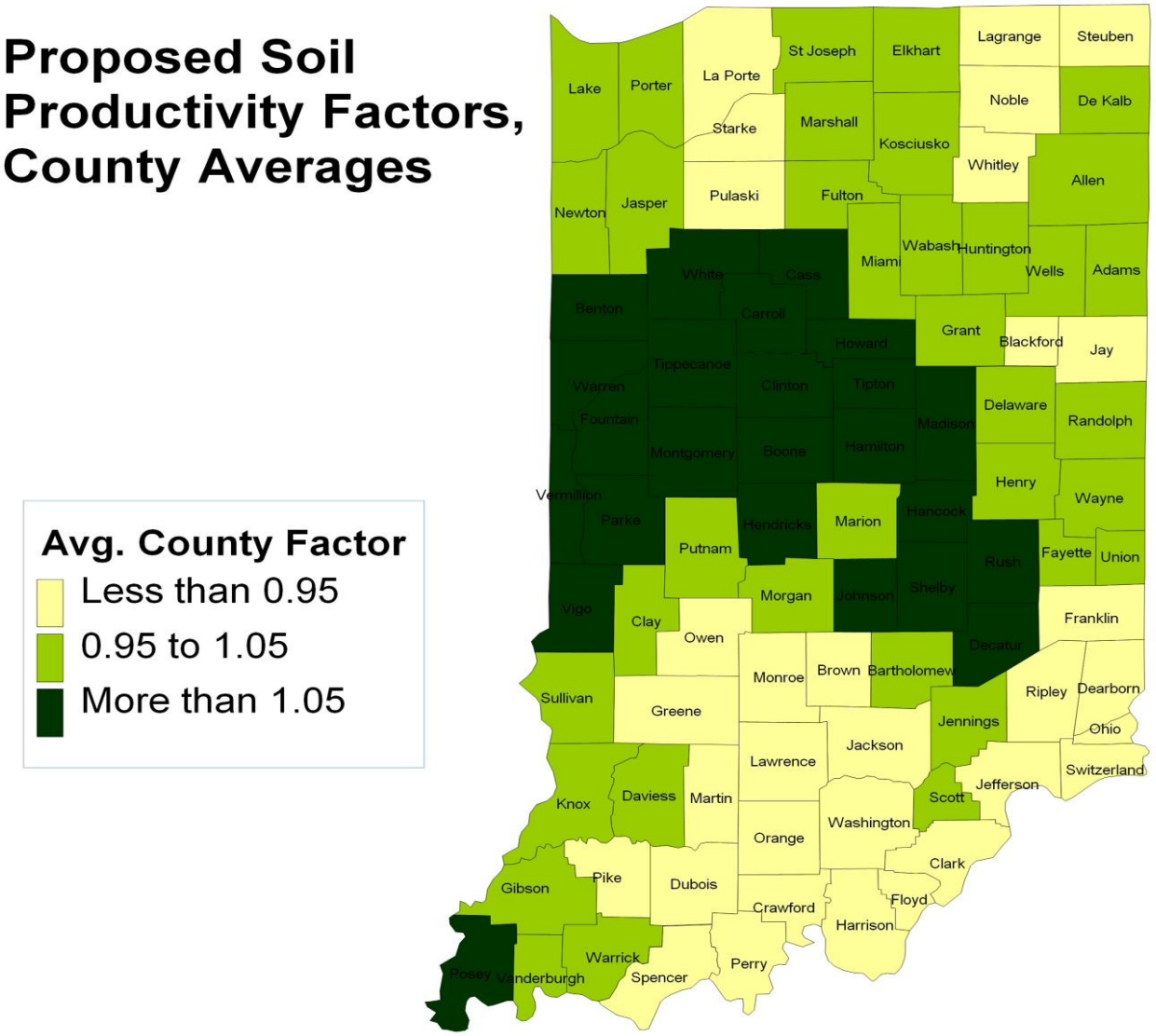


Factor Percent Change

- Less than 0%
- 0% to 5%
- 5% to 8%
- More than 8%

Soil Productivity Factors and Agricultural Land

Proposed Soil Productivity Factors, County Averages



Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
01	Adams	0.960	1.022	6.5%
02	Allen	0.984	1.039	5.6%
03	Bartholomew	0.973	1.007	3.5%
04	Benton	1.112	1.141	2.6%
05	Blackford	0.830	0.915	10.2%
06	Boone	1.100	1.122	2.0%
07	Brown	0.709	0.796	12.2%
08	Carroll	1.072	1.108	3.3%
09	Cass	1.027	1.071	4.3%
10	Clark	0.862	0.908	5.4%
11	Clay	0.983	1.034	5.2%
12	Clinton	1.119	1.147	2.5%
13	Crawford	0.682	0.765	12.1%
14	Daviess	0.915	0.980	7.0%
15	Dearborn	0.705	0.763	8.3%
16	Decatur	1.007	1.055	4.7%

Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
17	DeKalb	0.877	0.952	8.5%
18	Delaware	1.002	1.027	2.5%
19	Dubois	0.778	0.850	9.2%
20	Elkhart	0.884	0.952	7.7%
21	Fayette	0.967	1.022	5.7%
22	Floyd	0.910	0.880	-3.3%
23	Fountain	1.081	1.138	5.2%
24	Franklin	0.865	0.928	7.3%
25	Fulton	0.909	0.976	7.4%
26	Gibson	0.968	1.026	6.0%
27	Grant	0.942	1.003	6.5%
28	Greene	0.867	0.936	7.9%
29	Hamilton	1.091	1.125	3.1%
30	Hancock	1.089	1.124	3.2%
31	Harrison	0.754	0.814	7.9%
32	Hendricks	1.080	1.115	3.2%

Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
33	Henry	0.959	1.014	5.7%
34	Howard	1.094	1.127	3.0%
35	Huntington	0.955	1.014	6.2%
36	Jackson	0.881	0.936	6.2%
37	Jasper	0.941	1.003	6.5%
38	Jay	0.807	0.896	11.0%
39	Jefferson	0.832	0.892	7.2%
40	Jennings	0.983	1.039	5.7%
41	Johnson	1.037	1.081	4.2%
42	Knox	0.979	1.030	5.3%
43	Kosciusko	0.898	0.966	7.6%
44	LaGrange	0.775	0.863	11.3%
45	Lake	0.935	0.998	6.8%
46	LaPorte	0.828	0.911	10.0%
47	Lawrence	0.720	0.815	13.2%
48	Madison	1.060	1.099	3.7%

Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
49	Marion	0.989	1.008	1.9%
50	Marshall	0.961	1.017	5.8%
51	Martin	0.775	0.812	4.8%
52	Miami	0.935	0.998	6.7%
53	Monroe	0.805	0.864	7.3%
54	Montgomery	1.078	1.112	3.2%
55	Morgan	0.982	1.028	4.7%
56	Newton	0.959	1.017	6.1%
57	Noble	0.875	0.946	8.2%
58	Ohio	0.722	0.780	8.0%
59	Orange	0.778	0.856	10.1%
60	Owen	0.787	0.859	9.2%
61	Parke	1.007	1.062	5.5%
62	Perry	0.742	0.835	12.5%
63	Pike	0.828	0.900	8.7%
64	Porter	0.923	0.987	6.9%

Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
65	Posey	0.977	1.057	8.1%
66	Pulaski	0.916	0.944	3.1%
67	Putnam	0.996	1.039	4.4%
68	Randolph	0.963	1.018	5.7%
69	Ripley	0.869	0.940	8.2%
70	Rush	1.051	1.091	3.8%
71	St. Joseph	0.941	0.997	5.9%
72	Scott	0.900	0.958	6.5%
73	Shelby	1.037	1.081	4.2%
74	Spencer	0.865	0.928	7.3%
75	Starke	0.802	0.890	11.0%
76	Steuben	0.832	0.908	9.2%
77	Sullivan	0.977	1.029	5.4%
78	Switzerland	0.704	0.768	9.0%
79	Tippecanoe	1.065	1.105	3.7%
80	Tipton	1.139	1.162	2.0%

Soil Productivity Factors and Agricultural Land

		Average Soil Factor		
Cnty	**County**	**Current**	**Proposed**	**Change**
81	Union	0.978	1.031	5.4%
82	Vanderburgh	0.958	1.019	6.3%
83	Vermillion	1.047	1.084	3.5%
84	Vigo	1.018	1.061	4.2%
85	Wabash	0.965	1.021	5.8%
86	Warren	1.022	1.067	4.3%
87	Warrick	0.885	0.961	8.6%
88	Washington	0.846	0.918	8.5%
89	Wayne	0.885	0.955	7.9%
90	Wells	0.973	1.029	5.8%
91	White	1.020	1.067	4.6%
92	Whitley	0.865	0.937	8.3%
	Statewide	**0.951**	**1.006**	**5.8%**

*NOTE: These are proposed factors. There is a possibility these factors may change. Additionally, there is the possibility there could be legislation that would either delay the implementation of these factors or the formula/basis for the proposed factors.

Soil Productivity Factors and Agricultural Land

- **Developer's Discount**
  - Definition
  - Legislative Changes
  - IBTR/Court Decisions

Soil Productivity Factors and Agricultural Land

- **IC 6-1.1-4-12**
  Circumstances under which undeveloped land may be reassessed
  Sec. 12. (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business. The term includes a financial institution (as defined in IC 28-1-1-3(1)) if the financial institution's land in inventory is purchased, acquired, or held for one (1) or more of the purposes established under IC 28-1-11-5(a)(2), IC 28-1-11-5(a)(3), and IC 28-1-11-5(a)(4).

Soil Productivity Factors and Agricultural Land

(b) As used in this section, "land in inventory" means:

(1) a lot; or

(2) a tract that has not been subdivided into lots; to which a land developer holds title in the ordinary course of the land developer's trade or business.

(c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.

(d) For purposes of this section, land purchased, acquired, or held by a financial institution for one (1) or more of the purposes established under IC 28-1-11-5(a)(2), IC 28-1-11-5(a)(3),

Soil Productivity Factors and Agricultural Land

and IC 28-1-11-5(a)(4) is considered held for sale in the ordinary course of the financial institution's trade or business.

(e) Except as provided in subsections (i) and (j), if:

(1) land assessed on an acreage basis is subdivided into lots; or

(2) land is rezoned for, or put to, a different use;

the land shall be reassessed on the basis of its new classification.

(f) If improvements are added to real property, the improvements shall be assessed.

Soil Productivity Factors and Agricultural Land

(g) An assessment or reassessment made under this section is effective on the next assessment date.
(h) No petition to the department of local government finance is necessary with respect to an assessment or reassessment made under this section.
(i) Subject to subsection (j), land in inventory may not be reassessed until the next assessment date following the earliest of:
(1) the date on which title to the land is transferred by:
(A) the land developer; or

Soil Productivity Factors and Agricultural Land

(B) a successor land developer that acquires title to the land; to a person that is not a land developer;

(2) the date on which construction of a structure begins on the land; or

(3) the date on which a building permit is issued for construction of a building or structure on the land.

(j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

(Formerly: Acts 1975, P.L.47, SEC.1; Acts 1975, P.L.49, SEC.1.) As amended by P.L.90-2002, SEC.35; P.L.154-2006, SEC.1; P.L.118-2013, SEC.2.

Soil Productivity Factors and Agricultural Land

- Legislative Changes:
- House Enrolled Act 1568 (HEA1568-2013) amended statutes that govern matters related to property assessment.
- Specifically, Section 2 amends IC 6-1.1-4-12 so that for purposes of the "Developers Discount," a financial institution that holds land that (1) has been subdivided into lots: or (2) re-zoned for, or put to, a different use; qualifies for a land development exception in which the reclassification of the land is delayed.
- http://www.in.gov/dlgf/files/130606_-_Vincent_Memo_-_HEA_1568_Developers_Discount_Sale_of_Vacant_Parcels.pdf

Soil Productivity Factors and Agricultural Land

IBTR Decisions:

- Dunewood Shores, LP vs. Michigan Twp. Assessor (LaPorte Co.) – 2002 appeal decided in 2006 - see http://www.in.gov/ibtr/files/46-022-02-1-5-00018.pdf. The properties under review consisted of nine vacant lots located in the Lakeview and Washington Park subdivisions. The Petitioner contended that the subject properties were raw lands that had not been subdivided and should be valued using the "developer's discount." The Petitioner further contended that the transfer of ownership for the properties should not affect their value and that the purpose of ownership by a developer is for future development when the market permits.

Soil Productivity Factors and Agricultural Land

The Respondent contended that the properties were subdivided lots that had changed ownership and therefore should be valued as vacant lots rather than valued using the "developer's discount." The Respondent further contended that the properties were subdivided into lots in the early 1900s and that title had passed through multiple owners since the subdividing.

The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. Land must be reassessed upon the occurrence of any of three events: when land is subdivided into lots, when land is rezoned, or when land is put to a different use.

Soil Productivity Factors and Agricultural Land

The exception to the rule is "if the land is subdivided into lots *only, the reassessment may not occur until* the next assessment date following a change in title to the land." Here, the subject properties were subdivided long ago and have been assessed as single lots for decades. Further, the statute only restricts reassessment of the land until a change occurs in the title to the land. Here, again, the properties have changed ownership many times.

Finally, Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to "undeveloped" property and the Petitioner failed to cite to any authority for its claim that it is entitled to a $1,050 per acre valuation on the property it held for development.

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- Quality Homes by Brian Hayes, Inc. vs. Washington Twp. Assessor (Hamilton Co.) - 2006 appeal decided in 2008 – see http://www.in.gov/ibtr/files/29-015-06-1-5-00071.pdf . The properties under appeal were four vacant lots located in the Bridgewater Club subdivision, Carmel, Washington Township, in Hamilton County. The Petitioner requested the assessments for all four properties be $600 per lot pursuant to the "developer's discount." The Petitioner argued it is a builder in the Bridgewater subdivision and the lots it owned were assessed from $183,000 to $207,400. The Petitioner further argued that it had been assessed much higher than its direct competitors located in the same subdivision.

Soil Productivity Factors and Agricultural Land

The Respondent argued that the properties were subdivided lots that have changed ownership and therefore should be valued as vacant lots rather than valued using the "developer's discount." The Respondent also contended that the Petitioner failed to properly raise a uniformity argument. Finally, the Respondent argued that the properties' assessments reflect their respective market values-in-use. The Petitioner failed to present a prima facie case that its properties were assessed in error. The Petitioner did not dispute that the properties had been subdivided and had changed in equitable title. Thus, the Petitioner was not entitled to the "developer's discount" under the clear language of the statute.

Soil Productivity Factors and Agricultural Land

The Petitioner failed to identify any authority to support the contention that, because its "direct competitors" have met the requirements to receive the "developer's discount" rate, the subject properties would also qualify for the "developer's discount" rate.

Finally, Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to "undeveloped" property and the Petitioner has failed to cite to any authority for its claim that it is entitled to $600 per lot valuation on the property it holds for development. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination.

Soil Productivity Factors and Agricultural Land

- Edsel L. Byrd Development LLC vs. Harrison Co. Assessor – 2007 appeal decided in 2010 – see http://www.in.gov/ibtr/files/Edsel_L._Byrd_Dev_31-007-07-1-4-00119_thru_00134.pdf.
- The subject property consists of 16 unimproved lots located on Federal Drive in Corydon. The Petitioner purchased 49.106 acres of land for development purposes. Shortly after the purchase, the land was platted into 16 commercial lots, which collectively are the subject property. The Petitioner has continuously owned the subject property since then, retaining it for resale or development. The subject property has not been improved.

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No building permits have been sought or obtained for it. There has been no change in the use of the subject property since its purchase. Therefore, nothing has occurred to trigger a reassessment of the subject property.

The Petitioner purchased the subject property on September 14, 1999. It was zoned B-2 (business) at the time of purchase. On August 6, 2001, the Corydon Planning and Zoning Commission approved the subdivision of the property into 16 commercial lots. The Petitioner owned all these lots continuously from the 1999 date of purchase to the 2007 assessment date. None of these lots have been sold or transferred to anybody else.

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The 1999 assessment of the subject property was maintained for 2000 and 2001 (until the property was subdivided). On March 1, 2002, the lots were erroneously reassessed for the first time. They have been erroneously reassessed several times since then. The property's assessed values for 2002, 2003, 2004, 2005, and 2006 were not appealed.

The Petitioner contended that acceptance of moderate increases in assessed value in 2002 through 2006 does not mean the Petitioner is precluded from its appeal rights for 2007. The Petitioner has not waived the right to appeal for the developer's discount simply because it did not appeal in previous years.

Soil Productivity Factors and Agricultural Land

The Respondent does not dispute and stipulates in regard to the subject parcels that the Petitioner is in the business and purchased the subject property to develop the property and sell it to other buyers.

The Respondent contended that the statute providing for the developer's discount does not say the assessed value can never change. It only says the property cannot be reassessed.

The Respondent openly admitted the land classification was changed as part of the 2002 general reassessment and the subject property had been assessed as useable/undeveloped commercial land since then. The lack of any of the triggering events, however, indicates that the 2002 reclassification was contrary to the developer's discount.

Soil Productivity Factors and Agricultural Land

Furthermore, the Respondent offered no substantial reason or justification for that change. Therefore, the Board concluded that the 2002 reclassification was erroneous because according to the developer's discount statute the subject property still should have been assessed as agricultural land. Nevertheless, only the 2007 assessment appeal was before them.

Rather than addressing the justification for the 2002 reclassification, the Respondent claimed it would not be —feasible to go back to an agricultural land classification for the 2007 assessment.

Soil Productivity Factors and Agricultural Land

While the Respondent avoided using the term, the Respondent essentially argued that any issue about the reclassification from agricultural to commercial land was waived because the Petitioner failed to appeal the 2002 through 2006 assessments. The Respondent provided no authority or substantial argument for that position—and the Board is aware of none. There could have been any number of reasons for the Petitioner not to appeal those assessments, but they are not important. Nothing in this case precludes the Petitioner from its claim that the assessments for 2007 should conform to the law.

Soil Productivity Factors and Agricultural Land

Because the Petitioner and the subject property satisfy the statutory requirements for the developer's discount and none of the events that would trigger a change in the land classification occurred between 1999 and 2007, these 2007 assessments must be changed to return the subject property to agricultural land classification as required by Ind. Code §6-1.1-4-12.

Returning to agricultural land classification does not necessarily mean that the assessed values return to what they were in 1999 and it does not mean that the assessments should be changed to the amounts the Petitioner requested.

Soil Productivity Factors and Agricultural Land

Should the subject property be assessed based on the agricultural land base rate that was in effect when the Petitioner bought it ($495 per acre) or on the agricultural land base rate in effect for 2007 ($1,140 per acre)? The answer to this question depends on the meaning of the phrase —may not be reassessed as used in Ind. Code § 6-1.1-4-12(h).

The evidence demonstrates that the Petitioner and the subject property qualified for the developer's discount at Ind. Code § 6-1.1-4-12. The land classification for the 2007 assessment must be returned to agricultural, as it was when the Petitioner bought the property.

Soil Productivity Factors and Agricultural Land

Nevertheless, making that change does not require the assessed values to be returned to what they were in 1999-2001. Rather, the starting point for the calculations for each parcel must be the 2007 agricultural land base rate.

Soil Productivity Factors and Agricultural Land

- On October 4, 2013, the Indiana Supreme Court by unanimous vote issued an order denying the Hamilton County Assessor's petition for review in *Hamilton County Assessor v. Allisonville Road Development, LLC*.

  This case has been previously described as:
  The assessor "missed the big picture" of the developer's discount. The statute was "designed to encourage developers to buy farmland, subdivide it into lots, and resell the lots."

Soil Productivity Factors and Agricultural Land

That is the "bedrock purpose" of the statute, which as a whole "promotes commercial development by allowing a developer's land to be assessed on the basis of its original (i.e. its pre-purchase) classification until an objective event signaling the commencement of development occurs." Cessation of farming activities followed by the land's non-use "does not necessarily evidence the imminence of commercial development." The Court noted that land may lie fallow but remain agricultural. The Indiana Board's final determination was not erroneous. The Court also observed that the developer's discount essentially acted as an exception to the statute that land must be devoted to agricultural purposes to be assessed as farmland.

Soil Productivity Factors and Agricultural Land

- **Classified Forest/Woodlands**
  - Definition
  - Examples
  - Recent IBTR/Tax Court/Supreme Court Decisions

Soil Productivity Factors and Agricultural Land

- **Definition of the Classified Forest Program:**
  The Classified Forest and Wildlands Program encourages timber production, watershed protection, and wildlife habitat management on private lands in Indiana. Program landowners receive a property tax reduction in return for following a professionally written management plan. In addition to the tax incentive, landowners receive free technical assistance from Department of Natural Resources (DNR) foresters and wildlife biologists, priority for cost share to offset the cost of doing management, and the ability to "green" certify their forests. The minimum requirement for program enrollment is 10 acres of forest, wetland, shrubland, and/or grassland.

Soil Productivity Factors and Agricultural Land

- A Classified Forest and Wildlands tract is an area of at least 10.0 contiguous acres of forest or non-forest wildlife habitat where the landowner has agreed (by application) to be a good steward of the land and its natural resources. In return, the State of Indiana agrees to see that the assessed value of the land is reduced to $1 per acre, and taxed on that preferential assessment. The land is managed for timber production, wildlife habitat, and the protection of watersheds, while conserving other natural resources and values.

Soil Productivity Factors and Agricultural Land

- Eligible lands may be either native forests containing at least 40 square feet of basal area per acre or at least 1,000 timber-producing trees (any size) per acre. Tree plantations with at least 400 well-established timber-producing trees are also eligible to be classified. Wildlands can include natural or planted grasslands, wetlands, native woody vegetation, or areas of open water averaging less than 4 feet in depth or less than 2 acres in size.

Soil Productivity Factors and Agricultural Land

- Certain activities cannot take place on Classified Forest and Wildlands:
  - Grazing by domestic livestock
  - Building of houses, sheds, etc.
  - Intentional burning unless prescribed under a written management plan
  - Growing Christmas trees

Soil Productivity Factors and Agricultural Land

- Other activities are allowed and are encouraged when appropriate to meet the landowner's goals and objectives for the land. These activities, however, must not be conducted in a manner detrimental to the health and productivity of the property or its watershed. Allowed activities include:
  - Wildlife management
  - Maintenance of access roads and trails
  - Timber harvesting
  - Firewood cutting
  - Horseback riding
  - Hiking
  - Hunting

Soil Productivity Factors and Agricultural Land

- HOW TO ENTER THE PROGRAM: The taxpayer should contact their district forester to let him/her know they are interested in putting their land into Classification. An initial inspection of the property will be done to determine whether it meets the eligibility requirements. A written management plan, which may be prepared by the district forester or by a wildlife biologist or professional forester, is required prior to application. This plan puts into writing a description of the land, the taxpayer's goals for the land, and prescribes how to reach those goals over the next 5-10 years. This plan is flexible, and may change as their objectives change and/or the property develops over time.

Soil Productivity Factors and Agricultural Land

- The actual Classified Forest and Wildlands application must be taken to a registered land surveyor, who will write an exact description of the area being classified. This is usually done by providing an aerial photograph and a copy of the deed to the surveyor. An ‘on-the-ground’ survey is not required. The cost may vary according to the complexity of the survey and the surveyor. The county assessor must also sign the application, along with the state forester. Once these signatures have been completed, the document must be recorded in the county courthouse where the land is located.

Soil Productivity Factors and Agricultural Land

- REINSPECTIONS: At least once every seven years, the district forester or a representative will review the classified property (at no cost). The forester will look at the area to see how it is progressing, to be sure there are no violations occurring, and help the taxpayer update their management plan. The taxpayer is also required to fill out and return an annual report that is used by the district forester to keep up-to-date records of the classified land.

Soil Productivity Factors and Agricultural Land

- POSTING YOUR LAND: The district forester will provide signs to the taxpayer (at no cost) which must be posted around the classified property. The signs clearly state that the area is private property and a Classified Forest and Wildlands property. The Classified Forest and Wildlands designation does not open the land to public hunting.

Soil Productivity Factors and Agricultural Land

- SELLING OR TRANSFERRING THE LAND: Whenever the classified land is transferred to a new owner, the classified status remains intact. The same benefits and responsibilities are transferred to the new owner. If the new owner does not wish to participate in the program, they may withdraw the land from the program. The taxpayer must notify the district forester when the land changes hands. If the land is withdrawn from classification (voluntarily or involuntarily), the back taxes (up to 10 years), plus a 10% per year interest penalty, must be paid to the county. If not, it is considered a lien against the property and it is treated in the same manner that delinquent taxes on real property are treated.

Soil Productivity Factors and Agricultural Land

Properties that are entered in the Classified Forest and Wildlands program after June 30, 2006 are subject to an additional withdrawal penalty of $100 per withdrawal and $50 per acre withdrawn. Classified properties that are divided into 2 or more separate tracts must maintain at least 10.0 acres of eligible land in each tract to remain classified. In addition, a revised application describing the new tract boundaries must be filed with the district forester.

- See http://www.in.gov/dnr/forestry/4801.htm for more information.

Soil Productivity Factors and Agricultural Land

- **Woodland**
  Per the 2011 (*sic* 2012) Real Property Guidelines (see http://www.in.gov/dlgf/files/2011_Chapter_2_Final.pdf), Woodland is land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana Department of Natural Resources (DNR) as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland.

Soil Productivity Factors and Agricultural Land

Woodland:

a. Woodland is defined as “land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana Department of Natural Resources as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland.”

Soil Productivity Factors and Agricultural Land

b. A wooded parcel of land less than 10 acres may be assessed using the agricultural soil productivity method upon evidence of timber production or other agricultural use. In addition, smaller than 10 acre parcels not contiguous with other wooded parcels under the same ownership may qualify as “agricultural.” Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a “farm number” or programs designed to foster timber production management. The determining factors are provided in IC 6-1.1-4-13 and the *Guidelines. Of particular interest to the assessor is the reason for the purchase of the land.*

Soil Productivity Factors and Agricultural Land

c. A wooded parcel of land over 10 acres shall be classified and valued as agricultural land using the same methods and considerations outlined above.

d. While not controlling in the assessor‘s determination, the following factors may be of assistance:

(1) the acreage is designated by the DNR as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs;

(2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest;

Soil Productivity Factors and Agricultural Land

(3) the owner possesses a DNR management plan to further enhance the forest quality; and
(4) the owner can show that regular forest harvests have occurred over a long time period.

- **Examples:**
  a. A seven (7) acre parcel of land that comprises a one acre homesite and six acres of woods. The property owner claims that the six acres of woods should be assessed at the agricultural rate because the increase in the assessment caused by the residential "excess acreage" classification is exorbitant.

Soil Productivity Factors and Agricultural Land

The owner acknowledges that there is no timber management plan in-place. He bought the seven acre parcel because the zoning department requires at least five acres to construct a dwelling in a non-subdivided rural area.

Conclusion: The owner admits purchasing the parcel to satisfy residential use, not agricultural use. There is no evidence the land is used for an agricultural purpose. Additionally, there is no evidence of a timber management plan in-place, or past timber harvests. The parcel should be priced using the residential excess acreage rate.

Soil Productivity Factors and Agricultural Land

b. Various wooded parcels, both large and small, within a county have been reclassified from the agricultural productivity method of calculation to a flat excess acre rate. The following are examples:

(1) An 81 acre parcel has a one acre home site, 61 acres of woods, and 20 acres of tillable land. The county classified the 61 acres of woods using an excess acreage rate. The 61 acres of wooded area is determined to be land capable of producing timber or other wood products and has 50% or more canopy cover.

Soil Productivity Factors and Agricultural Land

Conclusion: The parcel's segmented land use types should continue to be priced using the agricultural productivity method because the parcel was purchased for agricultural use and is utilized for agricultural purposes as described in the Guidelines. Evidence of a farm number is also a factor in the assessor's determination.

Soil Productivity Factors and Agricultural Land

(2) Mr. Zee recently inherited a 54 acre parcel upon the death of his grandfather. The grandfather pastured the hillside property in the 1970s but had let the pastures overgrow with vegetation for the past 30 years. The parcel has a one acre homesite and 53 acres of woods. Mr. Zee, who has no affiliation with agriculture, is planning on moving his family into the dwelling but has no plans for the 53 acre woods. The property is not enrolled in a Federal Government program, there is no timber management plan in-place, the parcel is not enrolled in a classified program, nor has there ever been a timber harvest associated with the parcel.

Soil Productivity Factors and Agricultural Land

(2 con't.) The parcel's assessed value was calculated using the agricultural productivity method before the 2006 trending. As a result of trending, the 53 acres of woods was priced at the residential "excess acre" rate.

Conclusion: The land is appropriately classified because Mr. Zee did not purchase the land with the intent to pursue agricultural activities. Additional considerations are that Mr. Zee does not have a farm number, and he has not produced evidence of a timber management program.

Soil Productivity Factors and Agricultural Land

(3) An eight acre parcel contains a one acre homesite and seven acres of woods in an exclusive residential setting. Lots are purchased and sold in this neighborhood as residential. The owner asserts that the land is properly classified as agricultural because he cuts and sells firewood. He also files a farm schedule with his Federal Income Tax claiming that he is an agricultural producer, but does not have a farm number.

Soil Productivity Factors and Agricultural Land

Conclusion: Firewood alone is not evidence of agricultural activity. The assessor should examine the reasons for the purchase of the land and its current use. Evidence of a farm number, enrollment in classified forest programs, or timber harvests may be taken into consideration. In making a final determination, the assessor should outline statutory or rule reference to support the conclusion.

Soil Productivity Factors and Agricultural Land

Recent IBTR/Tax Court Decisions:

- *Kildsig v. Warrick County Assessor* (10/8/2013).
  This case concerns the Indiana Board of Tax Review's determination that the burden-shifting rule contained in Indiana Code § 6-1.1-15-1(p) did not apply to its proceedings and that a portion of Douglas G. Kildsig's land was properly classified as residential excess acreage for the 2009 tax year. The Court reversed in part and affirmed in part. The owner challenged the March 1, 2009 assessment of his property, which included 12.648 acres of land, his residence, two pole barns, a lake, and just over 11 acres of woods.

Soil Productivity Factors and Agricultural Land

Kildsig first claimed that because his 2009 assessment was more than 5% greater than his 2008 assessment, the assessor bore the burden of establishing the validity of his 2009 assessment pursuant to Indiana Code § 6-1.1-15-1(p). Kildsig also claimed that his assessment was incorrect because 11.648 acres were improperly classified as residential excess acreage rather than agricultural land. Kildsig explained that the acreage was agricultural land because he used it to grow trees that he used as firewood to heat his residence and because his neighbor's adjacent, similarly wooded parcel was classified as agricultural land.

Soil Productivity Factors and Agricultural Land

The assessor, however, maintained that the classification of Kildsig's land was proper because, unlike his neighbor, he did not use his land for any qualifying agricultural purpose. The assessor also claimed that Kildsig's assessment was proper because it was lower than both its 2005 purchase price of $207,000 and its 2008 list price of $410,000.

The assessor explained that although Kildsig had a Woods Management Plan, indicating that he intended to improve the timber production on the land to provide firewood, his plan was executed in 2010 and was not in effect during the 2009 tax year.

Soil Productivity Factors and Agricultural Land

The assessor also claimed that because Kildsig hunted in the wooded acreage and used its timber to heat his home, he used the land for recreational and residential purposes, not an agricultural purpose. Furthermore, the assessor claimed that the classification of the adjacent, wooded parcel was not indicative of the proper classification of Kildsig's land because the adjacent timberland was part of a much larger income-producing farm.

Finally, the assessor explained that Kildsig's wooded acreage had been incorrectly classified as agricultural land for years, and that she had purposefully delayed reclassifying his land as excess residential acreage in order to change similarly misclassified land at the same time.

Soil Productivity Factors and Agricultural Land

A determination of the Indiana Board is supported by substantial evidence "if a reasonable person could view the record in its entirety and find enough relevant evidence to support the . . . determination."

Here, the assessor's evidence indicates that Kildsig did not use his land for an agricultural purpose; Kildsig's evidence indicates he did. The Indiana Board found the assessor's evidentiary presentation more persuasive. Now, on appeal, Kildsig invites this Court to do something that it cannot do - reweigh the evidence.

Soil Productivity Factors and Agricultural Land

"Indeed, this Court may not reverse a final determination of the Indiana Board simply because it disagrees with how the Indiana Board found the facts, and it may not substitute its judgment for that of the Indiana Board."

Accordingly, the Court concludes that the Indiana Board's determination regarding the classification of a portion of Kildsig's land is supported by substantial evidence.

For the above-stated reasons, the Indiana Board's determination that the burden-shifting rule contained in Indiana Code §6-1.1-15-1(p) did not apply to its proceedings is REVERSED. The Court, however, AFFIRMS the Indiana Board's determination that Kildsig's 11.648 acres were properly classified as residential excess acreage for the 2009 tax year.

Soil Productivity Factors and Agricultural Land

- In *Orange County Assessor v. Stout*, (10/2/2013), the Orange County Assessor claims that the Indiana Board of Tax Review's final determination regarding James E. Stout's 2009 real property assessment is not in accordance with the law because the Indiana Board applied Indiana Code § 6-1.1-15-17, a burden-shifting statute, improperly. In the alternative, the assessor argues that the Indiana Board's final determination is not supported by the evidence. The Court, however, affirms the Indiana Board's decision.

Soil Productivity Factors and Agricultural Land

Stout owns 9.12 acres of land in West Baden Springs, Indiana. For the 2008 tax year, his land was assessed at $8,000. For the 2009 tax year, however, his land's assessed value increased to $45,600 because the assessor reclassified 8.12 acres of "agricultural" land to "residential excess" land. Stout asserted that his land's agricultural classification was proper because:

1) the tree canopy cover on seven acres was 100%;
2) he purchased another 1,000 trees for replanting on the eighth acre; and
3) similarly wooded neighboring properties were classified as agricultural.

Soil Productivity Factors and Agricultural Land

On May 18, 2010, Stout filed an appeal with the Orange County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA held a hearing on July 27, 2010. When, after 120 days the PTABOA still had not issued a decision on his appeal, Stout sought relief from the Indiana Board.

Soil Productivity Factors and Agricultural Land

The Indiana Board conducted a hearing on Stout's appeal on July 7, 2011. During that hearing, Stout argued that because his assessment increased by more than 5% from 2008 to 2009, Indiana Code § 6-1.1-15-17 required the assessor to prove that the assessment was correct. The assessor asserted, on the other hand, that because Indiana Code § 6-1.1-15-17 was first effective July 1, 2011, it applied only to assessment appeals involving the March 1, 2012, assessments and forward.

Soil Productivity Factors and Agricultural Land

The assessor explained that because Stout was appealing his 2009 assessment, Indiana Code § 6-1.1-15-17 did not apply, and Stout therefore bore the burden of proving that his assessment was incorrect.

On November 7, 2011, the Indiana Board issued a final determination finding that the assessor bore the burden of proving that Stout's land assessment was proper. The Indiana Board then concluded that the assessor failed to meet that burden.

Soil Productivity Factors and Agricultural Land

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Accordingly, the assessor must demonstrate to the Court that the Indiana Board's final determination in this matter is not in accordance with law or that it is unsupported by substantial evidence.

Soil Productivity Factors and Agricultural Land

Prior to 2009, a taxpayer who challenged his property tax assessment bore the burden of proof (i.e., the burden of persuading the fact-finder that the assessment was incorrect and the initial burden of producing evidence to demonstrate that the assessment was incorrect).

On appeal, the assessor first claims that the Indiana Board's final determination is not in accordance with the law because it "incorrectly applies the new burden of proof statute, Indiana Code § 6-1.1-15-17[.]"

Soil Productivity Factors and Agricultural Land

More specifically, the assessor argues that in applying Indiana Code § 6-1.1-15-17 to Stout's 2009 assessment appeal, which was already pending before the statute's effective date of July 1, 2011, the Indiana Board applied the new statute retroactively, in contravention of Indiana case law. The assessor's argument fails, however, for the following interrelated reasons.

First, contrary to the assessor's argument, Indiana Code § 6-1.1-15-17 is not a "new" statute, as its content had already been codified at Indiana Code § 6-1.1-15-1(p).

Soil Productivity Factors and Agricultural Land

The General Assembly repealed Indiana Code § 6-1.1-15-1(p) and enacted § 6-1.1-15-17 to clarify its original intent in enacting Indiana Code § 6-1.1-15-1(p): that the 5% burden-shifting rule was to be applied not solely at the preliminary level of the administrative process (i.e., the PTABOA level), but throughout the entire appeals process.

Accordingly, in originally enacting Indiana Code § 6-1.1-15-1(p), the General Assembly could not have intended the illogical result of shifting the burden of proof to the assessor in the preliminary stages of an appeal only to shift it back to the taxpayer thereafter.

Soil Productivity Factors and Agricultural Land

Thus, as early as 2009, the General Assembly deemed an annual increase in the assessed value of property in excess of 5% to automatically shift the burden of proof from the taxpayer (to demonstrate that the assessment was incorrect) to the assessing official (to demonstrate that the assessment was correct).

Second, the assessor's argument fails because it is premised on the belief that the statutory "trigger" for shifting the burden of proof from the taxpayer to an assessing official is the assessment date.

Soil Productivity Factors and Agricultural Land

In other words, the assessor believes that for Indiana Code § 6-1.1-15-17 to apply, the assessment – as well as the subsequent appeal thereon – must have occurred after the statute's effective date. Neither the plain language of Indiana Code § 6-1.1-15-17, nor the plain language of its predecessor, Indiana Code § 6-1.1-15-1(p), supports this interpretation. Both statutes similarly indicate that the burden of proof shifts from the taxpayer to an assessing official when a taxpayer files an appeal on an assessment that increased by more than 5% from one year to the next.

Soil Productivity Factors and Agricultural Land

This shift in the burden of proof applies to the process and procedure of appeals alone, not to the mechanics of valuing property as of a certain assessment date. Accordingly, the statutes apply to all pending appeals regardless of assessment dates. Moreover, it would be impractical to find that the statute's trigger is the assessment date because an assessment that increases by more than 5% from one year to the next matters little if the taxpayer chooses not to challenge the increase.

Soil Productivity Factors and Agricultural Land

Between 2008 and 2009, the assessor increased Stout's land assessment by more than 5%. When Stout appealed that assessment to the PTABOA on May 18, 2010, Indiana Code § 6-1.1-15-1(p) was in effect, placing the burden of proof on the assessor to establish the propriety of the assessment increase. Consequently, the Indiana Board's final determination that the assessor bore the burden of proof in this case is in accordance with the law.

Soil Productivity Factors and Agricultural Land

As an alternative argument, the assessor contends that the Indiana Board's final determination is not supported by the evidence because she clearly met her burden of proof in this case: she provided a reasonable basis for reclassifying Stout's land. This alternative argument also fails.

Land is classified and assessed as agricultural land when it is devoted to an agricultural use. Devoting land to an agricultural use involves, among other things, the cultivation of income-producing crops.

Soil Productivity Factors and Agricultural Land

During the Indiana Board hearing, the assessor submitted an aerial map that not only demonstrated that the tree canopy covered more than 50% of Stout's property, but also that Stout's tree canopy was similar to the neighboring properties.

When asked to clarify why some of those neighboring properties were classified as "agricultural" while others were classified as "residential excess," the assessor stated:

Soil Productivity Factors and Agricultural Land

What the county has attempted to do . . . is any property that is . . . classified as ag, it . . . would need to be either actively farmed or in the case of wooded, it would need to be harvestable timber[.] . . . The State has asked, recommended [to] the counties if it is wooded ground that the [property owner] provide a forest management plan and/or a timber harvesting plan for it to qualify as agricultural property. And what the county is doing . . . [is] reviewing all parcels that have been classified as agricultural to see if they actually would [meet] the State's mandate or the DLGF's mandate for agricultural property.

Soil Productivity Factors and Agricultural Land

In other words, the assessor explained that she changed the classification on Stout's land from "agricultural" to "residential excess" solely on the basis that she did not have a forest management plan or a timber harvesting plan for the property.

A final determination is not supported by the evidence if, upon reviewing the record in its entirety, a reasonable person cannot find enough relevant evidence to support the determination. Here, a reasonable mind would not accept the lack of a forest management plan or a timber harvesting plan alone as adequate support for the conclusion that Stout's property was not being used for agricultural purposes.

Soil Productivity Factors and Agricultural Land

The assessor claimed that her overall assessment of the property for $108,400 was supported by the fact that when Stout listed the property for sale in September of 2009 – improvements and all – he was asking $127,000. The Indiana Board rejected this argument on three grounds:

1) the assessor failed to provide any evidence relating the September 2009 ask price to the January 2008 valuation date;

2) Stout testified without contradiction that his ask price included personal property; and

3) Stout testified without contradiction that he never got any offers at that price. The assessor does not challenge the Indiana Board's ruling on this claim.

Soil Productivity Factors and Agricultural Land

The Department of Natural Resources only prescribes forest management plans for parcels that are a minimum of ten contiguous acres. See IND. CODE §§ 6-1.1-6-5, -16(b) (2009). The land at issue, however, is only 8.12 acres.

Moreover, the fact that the assessor did not have in her possession a timber harvesting plan for the property does not mean that one does not exist.

Soil Productivity Factors and Agricultural Land

Similarly, the lack of a timber harvesting plan does not mean that Stout has not harvested, or is harvesting, timber from the property. Because the assessor failed to provide any evidence that demonstrated that Stout was not using his 8.12 acre property for an agricultural purpose, the Court cannot say that the Indiana Board's final determination is not supported by substantial evidence.

For the above-stated reasons, the final determination of the Indiana Board is AFFIRMED.

Soil Productivity Factors and Agricultural Land

Frequently Asked Questions

Question: Can a Form 133 be used to appeal the Developer's Discount?

Answer: In an IBTR decision (http://www.in.gov/ibtr/files/Throgmartin_Henke_Development_29-015-08-3-5-00010_et_al.pdf), the issues presented for consideration by the Board is whether the assessor properly removed the developer's discount from the Petitioner's properties and whether the Petitioner has sufficiently shown that such an error can be corrected on a Form 133 petition under Indiana Code § 6-1.1-15-12.

Soil Productivity Factors and Agricultural Land

Form 133 petitions are governed by Indiana Code § 6-1.1-15-12. That statute provides, in relevant part:

(a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) of the following reasons:

(1) The description of the real property was in error;

(2) The assessment was against the wrong person;

(3) Taxes on the same property were charged more than one (1) time in the same year;

(4) There was a mathematical error in computing the taxes or penalties on the taxes;

Soil Productivity Factors and Agricultural Land

(5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another;
(6) The taxes, as a matter of law, were illegal;
(7) There was a mathematical error in computing an assessment;
(8) Through an error of omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.

Ind. Code § 6-1.1-15-12 (2003). Thus, Indiana Code § 6-1.1-15-12(a)(6) provides taxpayers with a remedy when their "taxes, as a matter of law, [are] illegal." Ind.Code § 6-1.1-15-12(a)(6).

Soil Productivity Factors and Agricultural Land

To determine something "as a matter of law" simply means to apply the law to undisputed, material facts.
In this particular case, the taxes on the Petitioner's properties were illegal as a matter of law and a Form 133 was a proper vehicle for the Petitioner to bring its appeals.

In another IBTR decision dealing with the assessment of common areas (see http://www.in.gov/ibtr/files/Timber_Ridge_-_Marion_-_Final_Determination.pdf), the appropriate use of the Form 133 is addressed, as well as an explanation of the difference between objective and subjective issues.

Soil Productivity Factors and Agricultural Land

In the decision, it was stated: The Indiana Tax Court has interpreted Ind. Code § 6-1.1-15-12 to mean that the Form 133 procedure may only be used to correct objective errors; it may not be used to correct "qualitative or discretionary decisions by assessors." Thus, "where the decision under review is automatically dictated by a simple true or false finding of fact, it is considered objective and properly challenged via Form 133."

Soil Productivity Factors and Agricultural Land

Question: Is all farm ground assessed the same regardless of it being a wooded area or flooded 2 or 3 times per year?

Answer: The base rate is applied to all agricultural land. However, certain influence factors are applied. For example, flooded land could get a 30% to 50% deduction (see pages 85 – 100 - http://www.in.gov/dlgf/files/2011_Chapter_2_Final.pdf).

Soil Productivity Factors and Agricultural Land

Question: Can the assessor request a USDA number as proof of agricultural? Is there a list of possible proof we can ask for?

Answer: The short answer is yes – you can request a USDA number as proof of agricultural activity. You could also ask for evidence like a copy of their Farmers Personal Property Return (Form 102), or other related information. In our February 2008 memo on Agricultural Land (see http://www.in.gov/dlgf/files/Memo_020808WoodlandPricing-FINAL_2_with_Examples.pdf), we state:

Soil Productivity Factors and Agricultural Land

4. Other References

a. Assessors are further directed that all acres enrolled in programs of the United States Department of Agriculture (USDA), Farm Services Agency, and Natural Resources Conservation Service and have received a “farm number” are eligible for classification as “agricultural.” Those acres have been determined by those administering federal programs to be a part of an “agricultural operation.” This applies to non-homestead acreage.

Soil Productivity Factors and Agricultural Land

b. A wooded parcel of land less than 10 acres may be assessed using the agricultural soil productivity method upon evidence of timber production or other agricultural use. In addition, smaller than 10 acre parcels not contiguous with other wooded parcels under the same ownership may qualify as “agricultural.” Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a “farm number” or programs designed to foster timber production management. The determining factors are provided in IC 6-1.1-4-13 and the *Guidelines*. Of particular interest to the assessor is the reason for the purchase of the land.

Soil Productivity Factors and Agricultural Land

In our Agricultural Land FAQ's (see http://www.in.gov/dlgf/files/121228_FAQ_-_Agriculture_Land_Base_Rate_-_March_1_2013.pdf) we state:

My land was previously assessed as agricultural land at the base rate before I purchased it. How can I get it reassessed at that rate?

Soil Productivity Factors and Agricultural Land

Indiana Code 6-1.1-4-13(a) states that land shall be assessed as agricultural land only when it is devoted to agricultural use. If the use of the land changed after being sold, different rules would apply to assessing it. If you believe the change in use should not have occurred, you can appeal your assessment; however, you must demonstrate that you devoted your property to agricultural purposes as of the assessment date.

Soil Productivity Factors and Agricultural Land

Question: My land assessment and subsequent tax bill increased significantly. Why did my land get re-classified from agricultural to excess residential?

Answer: Great deference is given to local control. In regard to the reclassification of the land from agricultural land to excess residential land – that is a subjective determination made by the assessor's office based on the use of the land. If a taxpayer disagrees with their assessment, they have the right to appeal.

Contact the Department

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